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Adolf Proidl

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS

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EXAMINER

TANG, KAREN C

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ADOLF PROIDL

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Appeal 2009-007647  
Application 09/954,654<sup>1</sup>  
Technology Center 2400

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Before ROBERT E. NAPPI, KENNETH W. HAIRSTON,  
and MARC S. HOFF, *Administrative Patent Judges*.

HOFF, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>2</sup>

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<sup>1</sup> The real party in interest is Koninklijke Philips Electronics N.V.

<sup>2</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

## STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from a Final Rejection of claims 1-20. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

Appellant's invention relates to an internet receiving apparatus (i.e. internet radio receiver or internet television or internet reader) that stores address information (ASI) of information servers which broadcast data over the internet. A quality test means, included within the internet receiving apparatus, tests whether the received data has satisfactory quality. When the detected quality value of the received data is below a quality threshold value, the quality test means sends an activation information signal to the address retrieval means to retrieve from the address server an updated ASI (Abstract; Spec. 6:27-7:10).

Claim 1 is exemplary:

1. An internet receiving arrangement for receiving information data stored in information servers connected to the internet, the arrangement having address retrieval means which, when activation information is present, are adapted to retrieve collective address information from an address server operatively connected to the address retrieval means of the internet, the collective address information identifying those information servers from which information data processable by the internet receiving arrangement can be retrieved, and having information retrieval means for retrieving the processable information data from an information server identified by the retrieved collective address information, and having quality test means for testing the information data retrieved and received by the information retrieval means and for supplying the activation information to the address retrieval means when the quality of the received information data is below a quality threshold value.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Proidl	US 2002/0049849 A1	Apr. 25, 2002
Kiraly	US 2002/0059592 A1	May 16, 2002
Madhavapeddi	US 2005/0271071 A1	Dec. 8, 2005

AAPA, Kerbango Radio (Kerbango), pp. 1-3

Claims 1, 2, 4, 6-12, 14, and 16-20 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Kiraly.

Claims 3 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kiraly in view of Kerbango.

Claims 5 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kiraly in view of Madhavapeddi.

Rather than repeat the arguments of Appellant or the Examiner, we make reference to the Appeal Brief (filed October 2, 2007), the Reply Brief (filed June 16, 2008), and the Examiner's Answer (mailed April 15, 2008), for their respective details.

### ISSUE

Appellant contends that Kiraly does not disclose the required claim limitation of a “[q]uality test means for supplying the activation information to the address retrieval means when the quality of the received information data is below a quality threshold value” (App. Br. 11; Reply Br. 3). Specifically, Appellant asserts that Kiraly merely monitors packet rates and the buffer content level or number of packets stored in buffers (App. Br. 10). Appellant argues further that Kiraly is not concerned with *quality* of

reception, but rather is concerned with the *quantity* of reception (App. Br. 12). Finally, Appellant contends that the word "quality" does not appear in Kiraly (App. Br. 12).

Appellant's contentions present us with the following dispositive issue:

Does Kiraly disclose an internet receiving apparatus that includes a "quality test means for testing the information data retrieved and received by the information retrieval means and for supplying the activation information to the address retrieval means when the quality of the received information data is below a quality threshold value"?

#### FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

##### *The Invention*

1. The quality testing means measures the quality of the incoming data comparing it to a quality threshold value which may be a given jitter value or a given packet failure rate. The package failure rate is "a percentage of the data packets expected in the continuous data stream of received audio data AD, which is allowed to be missing before processing of the received audio data AD becomes substantially impossible. . . . The jitter value indicates how strongly the data transfer rate . . . of the received continuous data stream is allowed to fluctuate so as to guarantee a continuous audio reproduction." (Spec. 6:27-7:10).

*Kiraly*

2. Kiraly discloses that each information receiver and retransmitter (IRRT) monitors the number of unrendered data packets stored within its own transmission buffers. When the number of unrendered data packets falls below a threshold level, the IRRT signals its near-empty condition to the Chaincast manager (CCM) such that a different upstream IRRT can be assigned to it. Specifically, transmission buffer 1000 of an IRRT 1001 receiving and storing time-stamped data packets from a chaincast source. Buffer 1000 is partitioned by a rendering pointer 1030 into two portions: a buffer forward (TBF) 1010 for storing the information to be rendered and buffer past (TBP) 1020 for storing the information that has already been rendered. Rendering pointer 1030 is pointing to the specific data packet(s) that is currently rendered. If the number of data packets falls below the "buffer low" pointer 1050, IRRT 1001 will signal its chaincast source to send more data packets. If the number of data packets falls below the "near empty" pointer 1040, IRRT 1001 will signal the CCM to assign another chaincast source for the IRRT 1001. As a result, the transmission buffer 1000 is maintained at full level, wherein fluctuations in data packet rate are minimized. (Fig. 10, ¶¶ [0073] and [0074]).

PRINCIPLES OF LAW

*Anticipation*

Anticipation pursuant to 35 U.S.C § 102 is established when a single prior art reference discloses expressly or under the principles of inherency each and every limitation of the claimed invention. *Atlas Powder Co. v.*

*IRECO Inc.*, 190 F.3d 1342, 1347 (Fed. Cir. 1999); *In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994).

### *Obviousness*

On the issue of obviousness, the Supreme Court has stated that “the obviousness analysis cannot be confined by a formalistic conception of the words teaching, suggestion, and motivation.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 419 (2007). Further, the Court stated “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* at 416.

### ANALYSIS

*Rejection of claims 1, 2, 4, 6-12, 14, and 16-20 under 35 U.S.C. § 102(e)*

Independent claim 1 recites “quality test means for testing the information data retrieved and received by the information retrieval means and for supplying the activation information to the address retrieval means when the quality of the received information data is below a quality threshold value.” Independent claim 11 recites a claim limitation similar in scope.

We consider Appellant’s arguments to be persuasive to show Examiner error. Specifically, we agree with Appellant that Kiraly does not disclose testing the quality of the data received; rather, Kiraly discloses testing the quantity of the data received (App. Br. 11-12). Kiraly discloses that each IRRT monitors the number of unrendered data packets stored within its own transmission buffers (FF 2). When the number of unrendered data packets falls below a first threshold level, “buffer low,” the IRRT requests that the source send more data packets (FF 2). When the number of

unrendered data packets falls below a second threshold level, “near empty,” the IRRT signals its near-empty condition to the Chaincast manager (CCM) to command it to assign a different upstream IRRT or information source (FF 2). Kiraly is silent as to testing the quality of the data. Even if the data transmitted has poor quality, the system of Kiraly would merely detect the number of data packets that are stored in the buffer (FF 2). The system of Kiraly would not detect the poor quality and request a different source. Thus, within the system of Kiraly, transmission of data having poor quality would go undetected.

Therefore, we find that Kiraly does not disclose an internet radio that includes “quality test means for testing the information data retrieved and received by the information retrieval means and for supplying the activation information to the address retrieval means when the quality of the received information data is below a quality threshold value.” As a result, we will not sustain the Examiner’s § 102 rejection of independent claims 1 and 11 and that of dependent claims 2, 4, 6-10, 12, 14, and 16-20.

*Rejection of claims 3, 5, 13, and 15 under 35 U.S.C. § 103(a)*

As noted *supra*, we reversed the rejection of claims 1 and 11 from which claims 3, 5, 13, and 15 respectively depend. We therefore reverse the Examiner’s rejections of claims 3, 5, 13, and 15 under 35 U.S.C. § 103, for the same reasons expressed with respect to the rejection of parent claims 1 and 11, *supra*, and for the additional reason that the references to Kerbango and Madhavapeddi fail to cure the noted shortcoming in the teachings of Kiraly.

### CONCLUSION

The references do not disclose an internet receiving apparatus that includes a “quality test means for testing the information data retrieved and received by the information retrieval means and for supplying the activation information to the address retrieval means when the quality of the received information data is below a quality threshold value.”

### ORDER

The Examiner’s rejection of claims 1-20 is reversed.

Appeal 2009-007647  
Application 09/954,654

REVERSED

ELD

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